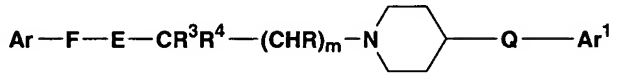
REMARKS

Reconsideration and reexamination is respectfully requested.

Claims 22-40 were rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over copending application 10/180,869 and US 6,323,223. Claims 22-40 were also provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over 10/634,946 in view of US 6,323,223.

The present invention is directed to compounds wherein the E linker contains a heterocyclic moiety. The copending application 10/180,869 discloses compounds wherein the E linker contains a carbocyclic moiety. The 6,323,223 patent discloses compounds generically having the formula



wherein (in pertinent part) R "with either R^3 or R^4 and the atoms to which they are attached from a carbocyclic or heterocycle". However, there are no compounds specifically disclosed having a heterocycle in this position. The example 5 (column 47) discloses a compound wherein E is -C(O)N(R^5)- and R^5 together with either R^3 or R^4 forms a heterocycloamino group. This heterocyclic group is part of an amido group which is not included in the present invention. It is believed that the present invention is not obvious over 10/180,869 and US 6,323,223. Therefore, withdrawal of the obvious-type double patenting rejection is respectfully requested.

The copending application 10/634,946 discloses compounds wherein the E linker is a carbocyclic group, and furthermore, having a G group which is a carbonyl or sulfonyl group. As stated above, the 6,323,223 patent does not specifically disclose compounds wherein R^3 or R^4 together with R form a heterocycle. It is believed that the present invention is not obvious over 10/634,946 in view of the 6,323,223 patent.

REMARKS SECTION

Claims 22-40 were rejected under Section 112, first paragraph as failing to comply with the written description requirement.

When analyzing a patent application for compliance with the written description requirement, "[t]here is a strong presumption that an adequate written description of the claimed invention is present when the application is filed," see MPEP 2163, and the office has "the initial burden of presenting by a preponderance of evidence why a person skilled in the art would not recognize in an applicant's disclosure a description of the invention". Non-compliance with the written description requirement would occur when an aspect of the claimed invention has not been described with sufficient particularity or if the claims require an essential or critical feature which is not adequately described and which is not conventional in the art, see MPEP 2163. In regard to generic claims covering chemical compounds, it is necessary to be able to define it so as to distinguish it from other materials, see MPEP 2163. The generic formula should indicate with specificity what the generic claims cover so that one skilled in the art can identify many of the species that the claims encompass, see MPEP 2163. Possession of the invention may also be shown by a clear depiction of the invention in detailed drawings or in structural chemical formulas which permit a person skilled in the art to clearly recognize that application had possession of the claimed invention, see MPEP 2163.

An applicant may show possession of an invention by disclosure of drawings or structural chemical formulas that are sufficiently detailed to show that application was in possession of the claimed invention as a whole. "In claims involving chemical materials, generic formulae usually indicate with specificity what the generic claims encompass. One skilled in the art can distinguish such a formula from others and can identify many of the species that the claims encompass. Accordingly, such a formula is normally an adequate description of the claimed genus", Regents of the University of California v. Eli Lily & Co. 119 F3d 1559, 1568.

REMARKS SECTION

In the present application, applicants have provided sufficient written description of the invention. The application describes the invention with great particularity, see pages 6-72. Therefore, the present invention has been described with sufficient clarity. Furthermore, the application describes detailed synthesis of compounds of the present invention. Schemes 31, 33, 34, 35, 36, 37, and 38, pages 105, 109, 110, 111, 112, 113, and 114, and the descriptions accompanying them describe methods for preparing pyrrolidinyls. The remaining schemes describes various methods of preparing the other portions of the compounds of the present invention. The application further describes the assays used in screening the compounds, see page 361-364, for CCR3 binding and human eosinophil chemotaxis. Therefore, the application provides more than adequate written description of the present invention and enabling support for the scope of the present invention. Withdrawal of the Section 112 rejection is respectfully requested.

Claims 31, 34-36, and 39-40 were rejected. The Office Action stated that they were reach through claims. While applicants do not agree with this rejection, solely to expedite prosecution of the application, claims 31, 34-35, and 39 have been cancelled without prejudice to prosecute them in a continuing application and claims 36 and 40 have been amended. Therefore, withdrawal of the Section 112 rejection against claims 36 and 40 is respectfully requested.

The application is now believed to be in condition for allowance and notification thereof is respectfully requested.

Respectfully submitted,

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